

# The Legal Nature of the Electronic Check

Dr. Ahmed Mahmoud Al-Masa'deh

Majmaa'h University -Faculty of Business Administration, Kingdom of Saudi Arabia

E-mail: [a.masaadi@yahoo.com](mailto:a.masaadi@yahoo.com)

## Abstract

This study aims to demonstrate the importance of the electronic check and its role in the banking sector which is the mainstay of the economy, especially in electronic commerce, by the emergence of the Internet the trade field has moved from the real domain to the virtual domain where the Internet has become the scene of business processes, while the electronic check has become closely related to electronic commerce, the researcher tries to investigate that by examining the literature about this topic, and extracting of concepts and fundamental principles related to the subject of the study.

This study has been processed through investigating the nature of the check and demonstrating its types in the first section, and the properties of the check and clarifying the difference between the electronic check and the ordinary check statement in the second section. The difference between the electronic check and the modern electronic payment systems have been investigated in the third section. Finally, the electronic check has been identified from the point of view of law as a fourth subject; the study concluded the most important conclusions and recommendations.

**Keywords:** Electronic check. Electronic payment. Electronic money

## 1.Introduction

E-commerce has achieved rapid growth in banking, as a result of the information technology revolution and the emergence of the e-community, since that was a catalyst for the expansion of banking technology, most notably the advent of electronic banking, which is a recent trend, different from traditional banks considering their many advantages.

As a result of the emergence of this term it was a necessity to continuously pursuing the positive interaction to keep pace with the technological development that one of its most important applications is electronic commerce that produced new financial requirements, which in most cases cannot be met effectively by traditional payment systems deployed in the commercial medium because this electronic means are characterized by speed in completing online transactions in addition to the low cost and ease of application.

Electronic check may be considered the most prominent electronic payment applications since it is a new tool for electronic payment, then there is a specifically or particularly - let us say narrowing- in the subject of the study, so this research is specialized in the type of electronic payment tool, limited to electronic check among other means of payment. Electronic check is of one of the outcomes of the technological revolution as a means of settling financial transactions and transactions over the Internet, especially in light of declining confidence among dealers to paper check (traditional)<sup>1</sup> where that was a major cause to think about finding a replacement for regular checks with the electronic check so as to restore the confidence in deal with checks to what it was before, and to highlight the important role played by electronic check in commercial transactions.

The researcher in this study relies on descriptive analytical approach, as well on many specialized sources of general literature as well as the contributions of jurisprudence, and finally, the study did not fail to refer to the many specialized websites as a rich source of latest trends, whether legislative, judicial, and doctrinal. Therefore, this study will explore in through: the nature and the types of the electronic check in the first section, and the properties of the electronic check and what sets it apart from the regular check in section II and the difference between the electronic check and the modern means of electronic payment in section III and the electronic check from the perspective of jurisprudence on section IV.

## 2.The Nature And the Types of The Electronic Check

The first appearance of the check was in England, as it was commonly used in England since the late 17th century. Electronic check is one of the most important electronic payment means also it is one of the types of electronic monetary for its speed in completing electronic transactions and also for achieving trust between customers and what agrees with globalism of e-commerce as circulated online, in the following the nature and the types of electronic checks will be discussed.

<sup>1</sup> Dr. Nasir al Saber Al-jubouri, the legal system of the electronic instrument, research publication, Journal of comparative law, no. 50, Iraq, Baghdad, 2007, p. 2.

## 2.1 The Nature of The Electronic Check

The Jordanian Trade Act<sup>1</sup> has defined the check by the item (123/c) of the Jordanian Trade Act: "the check is edited written according conditions mentioned in the law and contains an the order of the person who is the drawer to another identified person who is drawn from and is usually is a bank, to pay to a third person or to him who is the check holder-a beneficiary – a certain amount of money when the check is presented.

The French were the first to deal with the electronic check, French law passed in June 1865 defined by the cheek as a "written document in the form of agency enable the drawer to draw for himself or for the benefit of others all or some of the ready money restricted to his command that is at the drawn from<sup>2</sup>.

Some have defined the electronic check<sup>3</sup> as is a check that is edited by the computer as the paper check edited, it takes the same tracks as the paper check from the moment of its issuance, through to delivery and collection and restriction on the account, it moves via email from the issuing party, to the recipient of the check who is beneficiary (holder) and to be submitted to the Bank that works online, the Bank first convert the value of the check to the account of the holder of the check, then check is canceled and sent back electronically to the recipient of the check (the holder), to be an evidence that it has already been spent, and the recipient can be confirmed electronically that it had already been transferred to his account.

Others<sup>4</sup> defined the electronic check as tripartite edited, electronically processed either partly or wholly, including an order from someone called the drawer to the drawn from bank, to pay a sum of money to a third authorized person is called the beneficiary.

The Algerian lawmaker was restricted to the text on the check and the determination of its necessary statements within the article (472) of Algerian trade law<sup>5</sup> as it does not consider the electronic side although he does not neglect that side, as it is considered in other legislation, as shown in the code of money, credit and the Algerian organization no. 97-2003 related to clearing, the same lawmaker has admitted when the monetary and credit Act No. 11-2003 within the article (69) on the use of all means of payment which allow people to transfer funds irrespective of support type or method used<sup>6</sup>.

Since the electronic check is considered one of the modern electronic means of payment, the researcher refers to the Algerian monetary and credit code related to clearing because it has related transactions with check either the traditional or the electronic form.

Electronic check is considered an equivalent to the paper check in business dealing, it is a secure electronic message with a digital signature which is different in its entirety from the traditional manual signature, which contains a secure electronic file that has specific information to the check maker and the destination of paying of this check, its validity could be ascertained electronically through data sent by a source (the maker of the check) to the recipient of the check who present it to the Bank which works electronically online, so the bank transfer the value of the check to the recipient that is considered an evidence that the check is actually paid.

The electronic check is a coded electronic message prepared by its owner via electronic wallet to the other part who are the person to whom the money will be transferred to, through delicate steps, considering that the electronic wallet is an electronic application based on the arrangement and the organization of the mechanism of all the monetary transactions, that wallet contains all the data of the user of that card coded and saved on the personal computer or one of the compact discs or any other too that have the ability to save that data and use it to pay via Internet in all procurement conditions<sup>7</sup>.

## 2.2 The Types of The Electronic Checks

The electronic check is issued in many types illustrated below:

**2.2.1** The electronic check pre-specified value and stored according to the invention, Visual data (readable) are two into forms of data, printed data, and data stored and encrypted, stored on magnetic tape or on a storage cell, the upper limit of the check shows, for example (2000 JDs), then the maximum value of the check is determined in advance by the paid amount, it is a credit account to check under the condition that it should not exceed the

<sup>1</sup> This law was published in the page (472), Official Gazette No. (1910), issued on 30/3/1966 Act has addressed the provisions in articles (228-281).

<sup>2</sup> Nahid Fathi Hammoury, electronic commercial paper, the House of Culture for Publishing and Distribution, Amman, Jordan, second edition, 2010, p 183.

<sup>3</sup> Munir Muhammad Ganbaha, electronic banking, Dar Alfker Aljami, Alexandria, Egypt, 2005, page 2.

<sup>4</sup> Dr. Mostafa Kamal Taha, Wael Anwar Hazel, commercial papers and modern electronic means of payment, first edition, ATF, Alexandria House, 2005, p. 53.

<sup>5</sup> This law was passed by Ordinance No. 75-59 of 20 Ramadan 1395 26 March 1975 containing the prepared and complementary trade law.

<sup>6</sup> Wafed Yosuf , the legal system of electronic payment, a master's degree thesis in public law, published on the Internet, University of Tizi-Ouzou Mouloud Mammeri, 2011, p. 26

<sup>7</sup> Hanan Malika, electronic checks, research published on the Internet site of the Syrian Advocates Association , available online:

[http://www.syrianbar.org/feed.php?news=266&print&output\\_type=txt](http://www.syrianbar.org/feed.php?news=266&print&output_type=txt)

actual value of the check when issued, requiring a deposit of frozen amount of money in the drawer's account, so there will be in the account a sum that balances the total maximum value of checks drawn.

**2.2.2** the touristic electronic check which is also a prepaid check issued by visual data (printed) and magnetically stored data (magnetic tape, saving cell) that show a fixed value of the check, this fixed value indicates the amount paid in advance and frozen for a creditor of the check's account<sup>1</sup>. In each of the first type and the second type, visual data (printed) and magnetic data stored on magnetic tape, they both identify the Bank name and branch and value and the check number and account number, when you pass the check on the reader device, stored data is identified and read, and matched them with printed data to verify the check and the balance.

**2.2.3.** the electronic check cash payment tool from the current drawer's account. In this case, as in writing a paper check the drawer writes the amount of the check on the check sheet, the beneficiary can directly pass the check through device reader, enter the amount of the check, where he can freeze the written amount on the check, and this method is more suitable for the drawer as he can avoid any risk that may happen when the beneficiary submit the check, particularly when the drawer's account does not have enough credit to cover the amount of the check, in this case the check is rejected<sup>2</sup>.

### **3.The Properties of The Electronic Check, and What Does Make It Different from The Ordinary Check**

Since this check is important in electronic commerce we will discuss the properties of the electronic check and what does make it different from the ordinary check.

#### **3.1. The Properties of The Electronic Check**

There are many properties of electronic check that be shown in the followings:

**3.1.1.** The easy use of the electronic check where it is much similar to the paper check in most cases as it gives users greater protection against fraud compared to paper check<sup>3</sup>. In addition it gives the holder security instead of carrying paper money and to avoid theft and loss.

This sophisticated technique has been selected to be used in America to handle greater amount of money online by the U.S. Department of the Treasury, as a better alternative to deal compared with other tools, either the electronic or the paper used to settle transactions<sup>4</sup>.

**3.1.2.** The electronic check works to facilitate the trade-offs between individuals through the Internet without the need to send money, electronic cash, or even paper checks to the seller<sup>5</sup>.

Since that electronic check is a form of electronic money, it is easy to be used by persons who participate in e-commerce as it saves time and effort in addition to its significant compatibility with the universal horizon of e-commerce<sup>6</sup>.

**3.1.3.** The electronic check enhances the confidence among dealers with this modern technology through the inclusion this type of checks fundamental data that reassures the dealers since the check is encrypted for purposes of electronic clearing that is a coded system in which each symbol contains certain indication such as Bank name, account number and check number<sup>7</sup>, then the Bank will in turn verify data in the check and after confirmation that the process of clearing will be started.

**3.1.4.** Endorsement of the electronic check is a form of electronic signature, in this case when we are deal with a pre-transaction between the parties as the customer request of certain services or goods from a merchant, so the Merchant will send an electronic invoice to the customer, the client is committed to fulfilling the value of the goods, should send an electronic check to the website. In this case the check should be endorse as in the case of the paper check, since electronic endorsement is considered as a form of electronic signature, then the issuing bank and the beneficiary of the check should verify that the quantity of the sold materials are actually withdrawn from the customer's account and credited to the merchant account. After receiving the check from the client, the merchant can ship the goods and provides the required services<sup>8</sup>.

<sup>1</sup> Dr. Ahmed Safer, Ahmed, e-banking in the Arab countries, the modern enterprise Book Publishers, Tripoli, Lebanon, 2006, page 185 et seq.

<sup>2</sup> Mussa Issa Al-Ameri, the smart check, working paper presented in the conference for the banking and electronic business - between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1, 2003, p. 91. As well as Dr. Nasir al-Saber, the legal system of electronic instrument, op. cit., p. 5.

<sup>3</sup> Dr. Nabil Salah Mahmoud Mughrabi, check and cash (a comparative study) study presented at the Conference of banking and electronic-between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1, 2003, p. 69.

<sup>4</sup> Frank Jaffe and Susan Landry "Electronic Checks: The Best of Both Worlds," Electronic Commerce World (July 1997), and <http://www.echeck.org>.

<sup>5</sup> The application of electronic check in range trading reduces fraud to banks and recipients and create confidence in the dealings between the business and the availability of two confidence and security will further deal in checks

<sup>6</sup> Hanan Malika, electronic checks, op. cit. As well as Munir Mohammed ganbihi, op. cit., page 79.

<sup>7</sup> The Legal Aspects of Digital, Interdisciplinary Center for Law & Information Technology. <http://www.law.European.kuleuven.ac.be/icri/projects/digsigbook.htm>.

<sup>8</sup> Nahed Fathi Al-hammouri, op. cit., p. 206.

**3.1.5** The electronic check is a fulfillment tool but not a credit tool, as it can replace money as well as it is a means that are considered to be safe to do business transactions conducted via the Internet, in addition to its speed and ease of handling and use all the day and night.

### **3.2 The Difference Between The Ordinary Check And The Electronic Check.**

The electronic check is essentially an alternative to ordinary paper check, as it forms a legal obligation to pay a certain amount on a certain date, but to what extent does the electronic check differ from the ordinary paper check?

According to the General rules, the electronic checks are under to the same provisions governing the traditional checks, since the provisions governing traditional check are the same provisions the rule the electronic check. In the case where there are no special provisions, the electronic check is subjected to the rules of commercial common practice in the banking communities<sup>1</sup> stated by the most trade legislation<sup>2</sup>. Examples of these data are: place and date of creation of the check, moreover that it is not suspended under the condition to pay a certain amount of money<sup>3</sup>, as this note impedes the circulation of the check and prevent its use as a tool of fulfillment<sup>4</sup>. Also of the examples: the beneficiary's name and the name and signature of the person who make the check (the drawer) as well as the drawn from (the Bank)<sup>5</sup>, in addition it is possible that the electronic check could contain some optional data that is customary to add this data without affecting the nature of the check<sup>6</sup>.

What data must be contained in the electronic check, whether mandatory or optional under the legislation or by the jurisprudence and by some of the provisions of the judiciary<sup>7</sup>, is the same data that stated by the provisions of the paper check, and the Jordanian Court of Cassation had judged in its decision Jordanian discrimination rights of 3139/2005 which stated: "if the check does not have a date it will lose its property as a check and make it a regular document that does not serve as a basis for payment, the check is considered as a fulfillment tool and works as money in dealings and if the data of the check does not show the reason of issuing it, it would have been issued for a legitimate reason and the drawer of the check owes the beneficiary unless the contrary is proved ". In addition to a magnetic tape or storage cell, the device can read to read the data when the check is passed on it for matching the visual data with encrypted data stored in it, provided that there is a need to link the reader device with the issuing bank of the electronic checks through the Internet. So the electronic check is not different from the ordinary check (the traditional paper check) in terms of the information contained therein such as the maturity date of the check, the name of the beneficiary and the amount indicated with numbers and letters with the signature of the drawer and bank statements. The electronic check is considered an electronic document that contains the same requirements and procedures of the traditional check except it proceed by electronic means that have an established legal authority<sup>8</sup>, which complied with what in the ideal law on electronic commerce adopted by the United Nations Commission on international trade law in 1996 article VI on legal recognition of authoritative electronic means used in Commerce, which stipulates that: "where the law requires information to be in writing, that requirement is met by a data message if the data contained therein are available so as to be usable for reference."

In the case of clearing there is a vast difference between the electronic check and the paper check, where the collection of the check paper, takes a long time up to 24 hours, if the two banks are in one city, and 48 hours in different cities. In the case of the electronic check, the clearing process is conducted through electronic systems at the same moment depending on electronic processing of data contained in the electronic check and converting it to information via a communications network connected all the working banks and that participate in the electronic clearing system, which includes All types of EDI<sup>9</sup>.

<sup>1</sup> Nahed Fathi Al-hammouri, op. cit., p. 206.

<sup>2</sup> Article 123 para (c) of the Jordanian Trade Act, no. 12 of 1990.

<sup>3</sup> Article 228 para (c) of the Trade Act, no. 12 of 1990.

<sup>4</sup> Jordan's Court of Cassation ruled that the suspension of the payment of the amount of the check to a lost legal capacity as check, discrimination rights no. 153/87 of the Jordanian Bar Association Journal 1989, pp. 2641. Marking pen no. 96/89 magazine Jordanian Bar Association of 38 in 1990, p. 339.

<sup>5</sup> Dr. Aziz Al-uqaili, mediator in trade law, vol. 2, commercial paper and Bank operations, House of culture, Amman, Jordan, 2010, pp. 216 et seq.

<sup>6</sup> Samiha kalioub, commercial papers, 4th edition, Cairo Arabic, Renaissance house, 2005, p. 374 and beyond

<sup>7</sup> Jordanian rights discrimination 3139/2005 which stated: "the fact that the check date lost a check and make it a regular basis does not serve as a basis for action, the check disbursement against the tool and in the course of handling money and that, if no data due to released it is issued for a legitimate reason and that the puller owes the beneficiary unless the contrary is proved".

<sup>8</sup> Article 123 para (c) of the Jordanian Trade Act No. 12 of 1984 already referred to.

<sup>9</sup> Jordan is the second country in the world that adopts electronic clearing system within the banking system as an alternative to traditional check clearing mechanisms interbank trade, when the Central Bank held the electronic check clearing company Progress Soft in 2004, Jordan has teamed to clearing and was one of the first countries in the world to establish real-time electronic clearing environment throughout the Kingdom started to apply the electronic clearing system of the banks as of 4/11/2007.

A study has shown that the size of the electronic clearing procedure in Jordan during the second half of 2012 rose in monetary value, where the number of checks during this period varies between banks (6.6) million check for 6.5 million mutual checks compared with the same period in 2011<sup>1</sup>.

The most important feature that distinguish automated clearing house ACH service of checks from the traditional clearing systems, is its ability of quick processing of checks data for collection when due, this system also allows the safe transfer of funds from one account to another electronically on the same day of the same value without delay<sup>2</sup>.

It should be noted that the Algerian lawmaker had organized the clearing house operation tasks under Regulation No. 97-03<sup>3</sup>, without reference to the means used whether normal or electronic, stating in the article 18 of the previous regulation: "all daily transfer operations- between Algerian Bank and members on one hand and between the members themselves, on the other hand, for the favor of the account holder of its participants in all traditional and electronic means of payment. This is done at the house and in the presence of a representative of each Member involved in the transfer process."

This electronic transfer system is considered one of the world's leading systems which is an international system for the settlement of payments and clearing accounts of banks<sup>4</sup>, the main feature that differentiate the electronic clearing from the traditional clearing is the ability for quick processing of checks for collection by the due date.

One study of the US Central Bank in 1995 indicates that there is an increase in the size of the losses of the U.S. banks of wrong checks up to 600 million dollars a year. This study also indicated that a Bank whose assets reaches \$ 10 billion annually could provide nearly \$ 7 million through electronic clearing, while another bank with \$ 100 billions in assets could provides about \$ 260 million per year<sup>5</sup>.

Formally, the electronic is differentiated from the traditional check as it is edited by tri-parties and electronically processed either in whole or in part as previously stated that contains a legal obligation by the drawer to pay to the beneficiary by the paying bank. Moreover dealing with the electronic check facilitates banking business, given that the traditional form of check is of the most used commercial papers<sup>6</sup>.

#### **4. The Difference Between The Electronic Check and Electronic Payment Methods**

Originally the electronic fulfillment will not be achieved except via electronic banking using the Internet to facilitate the execution of their customers' transactions without having to go to branches or headquarters of banks, the electronic means of payment that will discussed in addition to electronic check, electronic money and credit cards, as follows:

##### **4.1 The Difference Between The Electronic Check and Electronic Money**

As electronic check is a means of electronic payment, electronic money is also considered one of the most important of these means, if the electronic check is equivalent to the traditional paper check; then the digital cash represents a cash value equivalent to the value specified in the official currency of \$ 10 (for example)<sup>7</sup>.

If the check is a bond that should be paid once viewed and has a fulfillment side, therefore it is a tool stands for money paid as it is viewed. The digital cash is a payment mechanisms of stored value that enable the proceeding of the processes of fulfillment through computer and Internet<sup>8</sup>, if the deal with e-check depends on the transfer of information related to the value and the parties of the deal where the deal, dealing with digital money occurs by sending the same monetary value itself across the network, such as sending banknotes in an envelope and sending monetary paper via the physical world<sup>9</sup>.

The European Parliament and the European Council have adopted legislation on electronic money under the recommendation No. 46/2000 of 18 September 2000, the definition of electronic money: "cash value representing a debt of the one who issues it and that are stored on an electronic support, and is issued to pay an amount that cannot be less than the value of the issued electronic cash, which would be accepted as a means of

<sup>1</sup> See Al- Rai newspaper, no. 15,386 22/9/2012. An article written by Suliman Abu Khashabah

<sup>2</sup> Faisal Daifallah Al-Nasser, the responsibility of the World Bank in the implementation of electronic check clearing, unpublished master thesis, Yarmouk University, Jordan, 2009, p. 17.

<sup>3</sup> Regulation No. 97-02 of 16 Rajab 1393 Ah 17 November 1997 on the clearing house was published in the Official Gazette dated March 25, 1998. In detail the idea. See noncitizen, the legal system of electronic payment, p. 65 and beyond.

<sup>4</sup>The Internet and Financial Services, A CEFT Report A Practical Guide, Center for the Study of Financial Innovation, London,1997, p:24.

<sup>5</sup>Faisal Daifallah Al-Nasser, the responsibility of the World Bank in the implementation of electronic check clearing, op. cit., p. 16

<sup>6</sup> Nahed Fathi Al-hammouri, op. cit., p. 184.

<sup>7</sup> Nahed Fathi Al-hammouri, op. cit., p. 190.

<sup>8</sup> Dr. Adnan Ibrahim Sirhan, fulfillment (pay), paper presented at the Conference and electronic banking – between the Shariah and the law-the Dubai Chamber of Commerce and industry 2003, p. 284. As well as the decision of the Cassation Court of Jordan of its decision to sanction discrimination no. 27/99 published in the magazine of the Jordanian Bar Association, 1999 page 3318.

<sup>9</sup> Nahed Fathi Al-hammouri, op. cit., p. 191.



payment by corporations that did not issued it"<sup>1</sup>. The electronic money or so-called term electronic units, represents financial values of different classes of numbers are stored on electronic memory (or so-called storing cell) as units that are used to meet the value of goods or services<sup>2</sup>.

If electronic money appear in digital form and used in electronic form<sup>3</sup>, so the electronic check can be traded through electronic endorsement, since electronic endorsement is considered a type of digital signature (electronic) to a third person after the dealing between the drawer and the beneficiary is completed through the electronic check and the beneficiary make sure of the balance of the check received from the drawer.

In addition to what previously discussed, there are some discrepancies between the check and electronic money are noteworthy summarized below:

- The Cost of Transactions

Electronic check processing cost is higher than that of electronic money; electronic check needs to engage in the operations of the automated settlement (ACH) such as paper checks, electronic cash trading remains between the parties over the Internet<sup>4</sup>.

- Transferability

Currently, there is not any transferable electronic means of payment since all modern means of payment either by electronic check or by electronic money must be documented on the financial institution, where security is most important in this area against misuse and robbery, moreover the transferability is incompatible with security levels required of the fulfillment electronic tools<sup>5</sup>, so the electronic check and digital cash are equal.

- Privacy and Traceability

Privacy refers to consumer's ability to exercise purchase online without disclosing his identity, privacy protection here means that some or all of the information of the deal are hidden from some parties of the deal, whether they are partners in the deal or observers. The elements of the deal include the amount, date, time, destination of the transaction, the product and the identity of the seller and the buyer.

But traceability is the ability of the specialized authorities to determine who bought, while using electronic checks require the disclosure of the identity of the consumer, whereas in case of using digital cash it is not required to disclose of the identity of the consumer, in addition to the financial institution is unable to trace the person if you use the blind signature. Thus, privacy and traceability are two properties that are on opposite sides, since the privacy feature is considered an advantage from the point of view of individuals," particularly, blind signature money that is used in the transactions between corporations and individuals, and consumer-to-consumer transactions"<sup>6</sup>.

Dealing with electronic money is done through two images:

A. digital liquid money (Hard Disk) in this type systems use the a computer program (Wallet Soft Ware) that stores token pieces or set of information that indicates the specific value, these coins sometimes called Net money<sup>7</sup>.

B. Prepaid Cards which are known as the storage of the cash value on an electronic chip installed on a plastic card, what recorded on the card is the original monetary value and the amount that was spent, for example, Smart Cards in the United States<sup>8</sup>. Consumers here request charging the electronic units on the special card by its wallet and pay for those units that are ready for use in payment of the prices of products purchased, as payment for the units that will be sold in advance<sup>9</sup>.

According to dealing with the electronic check that came by images that have been mentioned above, there is no need to mention them in order to avoid repetition.

#### 4.2 The Difference Between The Electronic Check And The Plastic Card

The Plastic card is known as the special card issued by the Bank or licensed institution to client<sup>10</sup> to obtain goods and services from certain places or stores handling such cards, the seller of the goods provides invoice signed by

<sup>1</sup> The European Parliament and the Council of the European Union (2000), "Electronic Money Directive", Directive 2000/46/EC of the European Parliament and of the Council, Brussels, P. 2

<sup>2</sup> Electronic Money, Consumer protection. Law enforcement. Supervisory and crossborder issues, Croup of ten, April 1997, in <http://www.bis.org/pub/1/gteno1.pdf>

<sup>3</sup> Dr. Sherif Mohammed ghannam, -e-wallet future vision-research presented in the banking and e-business Conference-between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1, 2003, p. 119.

<sup>4</sup> Dr. Nabil Salah Mahmoud, op. P. 75.

<sup>5</sup> Dr. Nabil Salah Mahmoud, op. P. 76.

<sup>6</sup> Mann,L.Catherine.2002. Global Electronic Commerce: Apolicy primer. Washington the institute for international economics, abicnights arranged lvith I nstitute for international economics 12.

<sup>7</sup> Dr. Adnan Sarhan, meet (pay), op. cit., p. 284.

<sup>8</sup> Thygesen, Christian and Kruse, Mogens (1998), "Electronic Money", Denmark National Bank Monetary Review, 4th Quarter, P. 3.

<sup>9</sup> Dr. Sherif Mohammed ghannam, electronic wallet, op. cit., p. 120. Dr. Adnan Sarhan, op. cit., p. 287.

<sup>10</sup> Dr. Adnan Sarhan, electronic fulfillment (pay), op. cit., p. 275

the customer to the bank which is the credit source who pays the invoice value, the Bank offers the customer a monthly breakdown of the total value of the payment or deduct from the account to blink<sup>1</sup>.

The Algerian lawmaker had defined the bank card in the article 345 repeated 23 Algerian commercial: "each payment card is any issued card by banks and public bodies legally qualified and allow the owner to withdraw or transfer funds"<sup>2</sup>.

The plastic card has three parts that is: the card issuer, the bearer and commodity or service vendor where all those parties are bound together by special contract, obligations could result on the behalf of its parties originally. The first appearance of the plastic card was in the United States in the form of a metal card issued by U.S. Oil Company in 1914 to ITS customers so that they could buy what they need from its distribution outlets and settle these purchases at the end of a specific term<sup>3</sup>.

In the following the discrepancies between electronic check and plastic card will be indicated:

**4.2.1** in terms of the number of parties: in the case of electronic check there are two main parties that are the drawer and the beneficiary but the drawn from, usually a Bank, his role is limited only by its obligation to pay the beneficiary upon the order of the drawer, whereas in the case of the plastic card, the three parties are the merchant and the cardholder and the Bank, the card issuer (Bank) is committed to pay the merchant in the boundaries agreed upon with the holder, since the commitment of the Bank (card issuer) is authentically to fulfill the requirements of the merchant because of what the card holder purchases<sup>4</sup>.

**4.2.2** Terms of use: the usage of the electronic is characterized by great easiness in online procurement; the reason for this is that each check has a different number, used only once, unlike the plastic card that can be used more than once, especially if the card number is known by one of the scammers.

**4.2.3** In terms of endorsement: the electronic check has the ability for the endorsement of a third party while the plastic card cannot be endorsed, and can be traded only by its legitimate holder, but for transmitting it to third parties, it is only possible under specific conditions in the contract between the Bank, the card issuer and holder<sup>5</sup>.

## 5. Check Email From The Perspective of Jurisprudence

The Jordanian legislature defined the check: "an edited and written according to conditions mentioned in the law and contains the order of the person who is the drawer to another identified person which is the drawn from, to pay to a third person or to him or to the check holder-a beneficiary- a specific amount once the check is presented"<sup>6</sup>.

At the present time the check plays an important role as a fulfillment tool that is indispensable in the use of cash in transactions, moreover playing an important role in banking operations, used as a tool to pull deposits from banks and execution of foreign exchange contracts<sup>7</sup>.

The Jordanian Court of Cassation has stated in one of its provision: "whereas the check is a payable fulfillment tool since the (approval) and the agreement of the sale contract which is based on the underlying featured on 28 August 1994 where the date on the check is 30/9/1994 and the later date of the agreement referred to this, on the one hand and on the other hand, the sale agreement proves that the seller has received the price before by signing and editing the check and because it is not legal to prove what it is included in a written evidence, the evidence that outweighed by the Court with the authority to weigh the evidence and assessment in accordance with articles (33, 43) of the evidence Act is sufficient to reach the outcome as long as it came up acceptable"<sup>8</sup>.

The Egyptian judiciary supported the principle that the check is a fulfillment tool and who claims the contrary should provide the evidence for such claim. In the rule of the Egyptian Court of Cassation ruling case No. (22) Of 31 BC session 19/6/1963 a set of provisions of x 14 860 stated: "in the origin the check is a fulfillment tool that and who claims the contrary of this clear original origin should manifest a proof of the claim."

The Egyptian Court of Cassation in the first of February 1962, has made a denunciation of the Group 13, p. 158: ".....And the check is a fulfillment tool and not a credit instrument, where the Court of Cassation has ruled that if the check is valid it will be a fulfillment tool that takes the place of cash money then must be payable when presented... "

The check is most used commercial paper in the work as a fulfillment tool according to its novelty with regard to the bond and the bond due because of the advantages its use such as protection established by the legislature for

<sup>1</sup> Dr. Nasir Al-jubouri, the legal system, op. cit., p. 8 and beyond

<sup>2</sup> Article (543 bis 23) of the Algerian commercial code.

<sup>3</sup> Dr. Adnan Sarhan, electronic fulfillment (pay), op. cit., p. 274

<sup>4</sup> Dr. Nasir Al-jubouri, the legal system, op. cit., p.

<sup>5</sup> Dr. Nedaa Kazem Al-Mawla, the legal nature of the bank card system, online publication, p. 12. Available on the website: [www.arablawninfo.com](http://www.arablawninfo.com)

<sup>6</sup> Article 123 para (c) of the Trade Act, reference has already been made.

<sup>7</sup> Dr. Aziz Al-uqaili, mediator in commercial law, op. cit., pp. 207 et seq..

<sup>8</sup> Discrimination rights no. 1573/1997 the judicial review Act of 1997, p. 76. articles (33, 43) of Jordanian evidence Act No. 30 of 1986 and the amended law of 2001.

dealers, and using the check as a fulfillment tool allows the drawer not to freeze amounts of money in his vaults for the fulfillment of its debts, and it is also a means of proof of the fulfillment, so that the debtor pay the debt through the check prove this very easily, because the payment process are recorded in the books of the Bank, in addition to the Bank retrieves the check after fulfilling its value and retained it<sup>1</sup>.

As this commercial paper has satisfied in appearance and formulation what prove its being a fulfillment tool and require to be paid once presented, so the necessary legal protection must be provided, and in order to provide such protection many laws have initiated the legal protection of the check in guarantee of fulfillment of its value. Article 275 (4 and 5) of Jordanian Trade Act stated that everyone who issued a check without the ability to be fulfilled should pay a financial sanction that does not exceed 50 dinars and the first paragraph of article 278 of the Jordanian Trade Act allowed the personal plaintiff who made the criminal case according to article 275 of the same Act, to request from the specialized court to sentence him in the amount equal to the value of the check without prejudice to his right, where appropriate, all implications, adding that the law gave the right to The applicant's claim his rights before the ordinary courts in the case chosen for this right<sup>2</sup>.

The Jordanian civil law consider issuing checks without balance as committing harm to actually harms the other drawer which requires civil liability in accordance with the provisions of the civil code<sup>3</sup>. The Jordanian legislature has provided for the criminal sanction in article (421), paragraph (1) of the Jordanian Penal Code<sup>4</sup>.

As UAE federal criminal law No. 3 of 1987 stated that " anyone who gave with bad intention a check without balance and can be drawn or he restored all or part of the remaining amount in order to not pay the rest of the amount of the check, or he order the drawn from not pay or intend to edit or sign it in a way that prevent paying it, shall be sentenced to imprisonment. Anyone who endorsed or gave a check and he knows that it has no balance or can be drawn shall be punished by the same image "<sup>5</sup>.

But the drawer may attempt to avoid criminal sanction decision on issuing a check without balance, by delaying the date of the check to the day when he confirmed for the fulfillment at the drawn from. Knowing that delaying the check date does not affect its validity and it will be fulfilled as soon as presented, as if the date of submission to fulfill is before the date indicated as a date of release<sup>6</sup>.

If the check is presented to be fulfilled before the date indicated as a date of issuance and the drawer has not at serving time sufficient funds to meet its value, it does not avert the drawer to the penalties for the crime of issuing checks without balance, in that the Jordanian Court of Cassation has ruled in decision No. 185/88 dated 29/11/1988 "the nature of the check as a fulfillment tool requires that the drawing date should be the same as the fulfillment date and the issuance date is the same as found in it and the payable as soon as presented like the money that people carry out their obligations and there is nothing in it that can foretell the one who look to it that in reality was only a credit instrument so it is the date on the check is the same day it was given, the drawer liable anyway if it has no balance and it is not accepted of the drawer to prove that the phenomenon only lesson since the conclusion is determined by what is seen."<sup>7</sup>

As a general rule, the electronic check is subjected to the same legal framework adopted for traditional check, since the provisions governing the traditional check are the same rules of the electronic check, but in the absence of special provision it will be subjected to the rules of banking practice. What is set by the legislator as a definition is consistent with the fact as the check is a current payable fulfillment tool, given that the beneficiary makes sure there is a balance and enough value for check acceptance for this moment.

The legislative trend in Jordan seems clear in dealing with the electronic check through what stated about the electronic bond, as stipulated in article (10/c) of the electronic transactions Act, in spite of this trend the legislature has kept that conditionality on the approval of the Central Bank with regard to the applicable

<sup>1</sup>Dr. Aziz Al-uqaili, mediator in commercial law, op. cit., p. 207.

<sup>2</sup>Dr. Fayad AlQudah, explained the Jordanian commercial law, commercial papers, Wael publishing, 1st Edition, Amman, Jordan, 2009, p. 378. Paragraph (2) of article 278 of the Jordanian trade Act.

<sup>3</sup>Article 256 of the Jordanian Civil Code which stipulates that: "any damage to third parties and if necessary is not highlighted to ensure damage".

<sup>4</sup>Article (124), paragraph (1) of the Jordanian Penal Code No. 16 of 1960, as amended up to the year 2010 provided that: 1. shall be punished with imprisonment for not less than one year and not more than two years and a fine of not less than 100 dinars and not more than two hundred dinars each, with bad faith to commit the following acts:

A. If a check and not issues a check that has Exchange

B. If pulled after issuing the check, all for fulfilling or part so that the remaining amount is not sufficient for its value.

C. If issued a warrant to the drawee not to cash the check in circumstances other than those permitted D. if it appears to the other checks or gave him a check payable to bearer and he knows he has no full value meets or knows that non-exchangeable

E. If free check or signed in such a way that prevents it from being cashed by law.

<sup>5</sup>Article (402) from the UAE Federal Penal Code (Law No. 3 of 1987)

<sup>6</sup>Article 245, paragraph 1 of the Jordanian trade Act. For more detail see Dr. Aziz Al-uqaili, mediator in commercial law, op. cit., p. 232 and beyond.

<sup>7</sup>Marking penalty, Journal of the Jordanian Bar Association, 1989, p. 283, as well as highlight pen no. 163/89, Journal of the Jordanian Bar Association (1990), p. 343.



provisions on the electronic check <sup>1</sup>.

## 6. Conclusion

From the foregoing, the most important results will be shown, then the key recommendations of this study will be reviewed, as follows:-

### 6.1 study findings:

**6.1.1** The electronic check is a new electronic payment tool plus it is one outcome of the technological revolution and is a means for the settlement of financial transactions and transactions over the Internet, moreover it is an extension and development of the traditional check.

**6.1.2** The electronic check contains an electronic chip whose space is enclosed like a metal; this chip is considered as an electronic cash wallet.

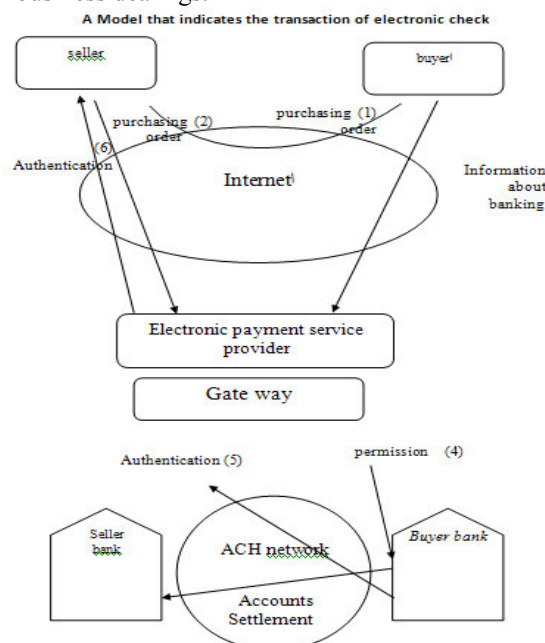
**6.1.3.** Electronic endorsement gave a great opportunity for dealing with Electronic check on a large-scale, where it was the cause of the existence of trust and security needed, which led to the stability in the deal.

### 6.2 Recommendations

The most important recommendations that the researcher has found through this study are:

**6.2.1.** Work on the development of legal texts governing electronic check as to this subject of great importance in the e-commerce system, where it can be classified as a new business environment.

**6.2.2.** The Jordanian legislature should give more attention to the electronic check; since it could be a substitute for the regular check (paper) in business dealings.



## References

- Dr. Nasir Sabir Lafteh Al-jubouri . the legal system of electronic instrument, research publication, Journal of comparative law, no. 50, Iraq, Baghdad, 2007.
- Munir Mohammed Ganbihi, electronic companies, Dar Al-fikr, Alexandria, Egypt, 2005.
- Hanan Malika, electronic checks, research published on the Internet site of the Syrian Bar Association is available online:  
[http://www.syrianbar.org/feed.php?news=266&print&output\\_type=txt](http://www.syrianbar.org/feed.php?news=266&print&output_type=txt)
- Dr. Ahmed travel, electronic banking in Arabic countries, modern enterprise for bookpublishers, Tripoli, Lebanon, 2006.

<sup>1</sup>Article 19 of the Jordanian electronic transactions Act No. 85/2001 publication on page 6010 Official Gazette No. 4524-date 2001/12/31, which stipulates that: "the electronic convertible bond:

N. Electronic bond is transferable if the terms of the negotiable instrument in accordance with the provisions of the Trade Act, with the exception of the writing requirement, provided that the drawer had agreed on negotiability.

B. If the retrieval of data contained on my cheque, keep the check electronically in accordance with the provisions of article 8 of this law, legal action.

J. do not apply the provisions of articles (20) and (21) and (22) and (23) and (24) of the law on electronic checks only with the approval of the Central Bank set its foundations under instructions issued to this end ".

- Moses Issa Al-Ameri, check smart, working paper presented in the banking and e-between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1 2003.
- Dr. Nabil Salah Mahmoud Mughrabi, cheque and cash (a comparative study), paper presented at Conference of banking and electronic-between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1 2003.
- Dr. Samiha kaliouby, commercial papers, 4th floor, Cairo Arabic, Renaissance house, 2005.
- Dr. Adnan Ibrahim Sirhan, meet (pay), paper presented at Conference of banking and electronic-between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1 2003.
- Dr. Tarek Hammad ' Abdul ' Aal, e-commerce, concepts-test challenges, University House, Alexandria, 2003.
- Dr. Sherif Mohammed Ghannam, wallet e-vision-search provider in the banking and e-Conference between the Shariah and the law-the Dubai Chamber of Commerce and industry, vol. 1 2003.
- Dr. Aziz Al-uqaili, mediator in commercial law, part II, commercial paper and Bank operations, House of culture, Amman, Jordan, 2010.
- Dr. Nidaa Kazem Al-Mawla, the legal nature of the bank card system, research published online, on the website: [www.arablawninfo.com](http://www.arablawninfo.com)
- Nahed Fathi Al-hammouri, electronic business cards, Second Edition, House of culture publishing, Amman Jordan, 2010.
- Dr. Mustafa Kamal Taha, Wael Anwar Hazel, commercial paper, and modern electronic means of payment, first edition, ATF, Alexandria House, 2005.
- Wafed Yousef, the legal system of electronic payment, a master's degree in public law, published on the Internet, University of Tizi-Ouzou Mouloud Mammeri, 2011.
- Adli Kandah, economic impacts of electronic clearing, a working paper presented at the first Forum on electronic clearing and economic and development dimensions (Hotel Holiday Inn/Amman) from 6 to 7 May 2008.
- Faisal Daifallah Al-Nasser, the responsibility of the World Bank in the implementation of electronic cheque clearing, unpublished ma thesis, Yarmouk University, Jordan, 2009.
- Dr. Fayad Al-Qudah, explained the Jordanian commercial law, commercial papers, Wael publishing, 1st Edition, Amman, Jordan, 2009
- Frank Jaffe and Susan Landry "Electronic Checks: The Best of Both Worlds, Electronic Commerce World (July 1997), and <http://www.echeck.org>.
- Electronic Money, Consumer protection. Law enforcement. Supervisory and Crossborder issues, Group of ten, April 1997, and <http://www.echeck.org>.
- Thygesen, Christian and Kruse, Mogens (1998), "Electronic Money Danamarks National Bank Monetary Review, 4th Quarter.
- The Legal Aspects of Digital, Interdisciplinary Center for Law & Information Technology. <http://www.law.European.kuleuven.ac.be/icri/projects/digsigbook.htm>.
- The Internet and Financial Services, A CEFT Report A Practical Guide, Center for the Study of Financial Innovation, London, 1997.
- The European Parliament and the Council of the European Union (2000), "Electronic Money Directive", Directive 2000/46/EC of the European Parliament and of the Council, Brussels.
- Jordanian Trade Act No. 12 of 1996.
- Jordanian Civil Law No. 3 of 1976, as amended.
- Jordanian Penal Code No. 16 of 1960, as amended up to the year 2010.
- UAE Federal Penal Code No. 3 of 1986.
- code of money and credit and the Algerian organization no. 97-2003.
- Algerian trade law promulgated by Decree No. 57-59 of 20 Ramadan 1395 26 March 1975 containing the prepared and complementary trade law.